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7                   UNITED STATES DISTRICT COURT  
8                   NORTHERN DISTRICT OF CALIFORNIA  
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10 FLORANTE BAUTISTA,

No. C 09-596 WDB

11                   Plaintiff,

ORDER IN RESPONSE TO  
PLAINTIFF'S MAY 4, 2009,  
SUBMISSION

12                   v.

13                   WASHINGTON MUTUAL  
14                   BANK, et al.

15                   Defendants.

16                   /

17                   The Court has received plaintiff's "Motion for Reconsideration in Support of  
18 Plaintiffs, Non-Appearance on Scheduled Hearing on April 27, 2009, 2:30 PM," filed  
19 May 4, 2009.

20                   The Court has some serious questions about the accuracy of the excuse Mr.  
21 Bautista has provided to explain his failure to appear at the April 27th court  
22 proceedings.

23                   **By May 12, 2009, at 4:00 p.m.,** Mr. Bautista must file with the Court and serve  
24 on opposing counsel a declaration signed under penalty of perjury that explains in  
25 detail the following.

- 26                   (1) On what date did plaintiff receive the defendants' Motion to Dismiss for  
27 Failure to State a Claim? Defendants have filed a Proof of Service  
28 indicating that this document was mailed to Mr. Bautista on March 12,  
2009, to 234 Morton Dr., Daly City, California 94015. If Mr. Bautista

1           contends that he did not receive this document until after March 19, 2009  
2           (i.e., within one week after mailing), then plaintiff must explain the  
3           circumstances that resulted in his not receiving the document until after  
4           that date.

- 5           (2) Mr. Bautista asserts that he was out of the country from March 10, 2009  
6           until April 25, 2009. If plaintiff was out of the country during this period  
7           how was plaintiff able to sign and file (a) plaintiff's Consent to  
8           Magistrate Judge jurisdiction, filed April 3, 2009, and (b) plaintiff's  
9           Response to Show Cause of Substantiality, filed April 13, 2009?  
10          (3) Plaintiff's April 3rd filing appears to have been filed in response to this  
11           Court's Clerk's Notice requiring the parties to consent or request  
12           reassignment by April 6, 2009. See, Clerk's Notice, filed March 19,  
13           2009. Plaintiff's April 13th filing appears to have been filed in response  
14           to this Court's Order extending plaintiff's deadline for filing an  
15           opposition to defendants' Motion to Dismiss until April 13, 2009. See,  
16           Order re Pending Motion to Dismiss, filed April 7, 2009. The Court  
17           mailed both the Clerk's Notice and the Court's Order re Pending Motion  
18           to Dismiss to plaintiff during the period he claims to have been out of the  
19           country. Nonetheless, plaintiff was able to respond in a timely manner to  
20           both of these directives from the Court. If plaintiff contends that he did  
21           not receive defendants' Motion to Dismiss, mailed to plaintiff in Daly  
22           City on March 12th, (see item (1) above) or that he received it but was  
23           unable to respond to it, explain why plaintiff received and was able to  
24           respond to the directives from the Court that were mailed to the same  
25           address during the same period.

26          //

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1       If plaintiff chooses not to respond to this Order or if the Court finds that  
2 plaintiff's response to this Order is clearly insufficient to accurately explain his failure  
3 to appear at this Court's April 27th proceedings, **the Court WILL DISMISS**  
4 **plaintiff's complaint WITH PREJUDICE for the reasons stated in this Court's**  
5 **Conditional Order Dismissing With Prejudice Complaint Filed February 10,**  
6 **2009, filed April 28, 2009.**

7 **IT IS SO ORDERED.**

8 Dated: May 5, 2009

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11 WAYNE D. BRAZIL  
12 United States Magistrate Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

Florante Bautista,

Plaintiff,

Case Number: C 09-596 WDB

V.

## Washington Mutual Bank, et al.,

## Defendants.

## **CERTIFICATE OF SERVICE**

## Washington Mutual Bank, et al.,

## Defendants.

I, the undersigned, hereby certify that I am an employee in Office of the Clerk, U.S. District Court, Northern District of California.

That on May 5, 2009, I SERVED a true and correct copy(ies) of the attached Order by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Florante Bautista  
234 Morton Drive  
Daly City, CA, 94015

Dated: May 5, 2009

Richard W. Wieking, Clerk

Michelle Sicular

By: Michelle Sicula, Law Clerk/Deputy Clerk